

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

| | | |
|---------------------------------|---|----------------------------------|
| William T. Sagmiller, |) | |
| |) | |
| Plaintiff, |) | |
| |) | REPORT AND RECOMMENDATION |
| vs. |) | |
| |) | |
| Catholic Diocese of Bismarck, |) | |
| Bishop Paul A. Zipfel, |) | |
| Saint Joseph Catholic Church, |) | |
| Saint Joseph Catholic School, |) | |
| Sisters of Saint Benedict, osb, |) | |
| Father A.J. Galowitsch, and |) | Case No. 1:09-cv-081 |
| Father Frank, |) | |
| |) | |
| Defendants. |) | |

Plaintiff initiated the above-entitled action by filing a complaint on December 7, 2009. Defendants Catholic Diocese of Bismarck, Bishop Paul A. Zipfel, and Saint Joseph Catholic Church, and Saint Joseph Catholic School (hereinafter collectively referred to as the “Catholic Church”) filed an answer to the complaint on February 16, 2010.

On March 1, 2010, Plaintiff filed what was styled as a supplement to his complaint. Therein, he requested that “defendant Father A.J. Galowitsch be removed as a defendant as he is Deceased.” Additionally, he advised the court of his doubts as to whether Father Frank was still living. The court subsequently conducted a telephonic status conference with Plaintiff and counsel for the Catholic Church.

On March 30, 2010, Plaintiff and the Catholic Church filed a Stipulation of Dismissal with prejudice. The court subsequently adopted the stipulation in an order dated March 31, 2010.

The undersigned now **RECOMMENDS** that Plaintiffs claims as to the remaining

defendants--Sisters of Saint Benedict, osb, Father A.J. Galowitsch, and Father Frank--be **DISMISSED** without prejudice. Plaintiff has voluntarily withdrawn his claims against A.J. Galowitsch. Further, there is nothing in the record to indicate that the Sisters of Saint Benedict and Father Frank have been served with a copy of complaint. Finally, based upon statements made by Plaintiff in the supplemental pleading on March 1, 2010, and statements made by the parties during their status conference, it would appear that Father Frank is deceased.

NOTICE OF RIGHT TO FILE OBJECTIONS

Pursuant to D.N.D. Civil L.R. 72.1(D)(3), any party may object to this recommendation within fourteen (14) days after being served with a copy of this Report and Recommendation. Failure to file appropriate objections may result in the recommended action being taken without further notice or opportunity to respond.

Dated this 12th day of April, 2010.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge